

**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

*Phillips*  
26196

**FILE:** B-212080

**DATE:** September 13, 1983

**MATTER OF:** Le Prix Electrical Distributors, Ltd.

**DIGEST:**

1. GAO will not review question of small business size status, because Small Business Administration has statutory authority to conclusively determine small business size status for Federal procurements.
2. New equipment is not required where specifications do not call for it.
3. Determination concerning price reasonableness is matter of administrative discretion which GAO will not question unless determination is unreasonable or there is a showing of bad faith or fraud.
4. Protester was not prejudiced by fact that low offeror provided longer warranty period than protester.
5. Procedural deficiency does not affect validity of properly awarded contract.

Le Prix Electrical Distributors, Ltd. (Le Prix), protests the award of a contract made under requests for quotations (RFQ) Nos. F08621-83-T1317 and F08621-83-T1368 issued by Homestead Air Force Base, Florida.

Le Prix originally protested that it was entitled to award because it was the low offeror. However, when the contracting agency established that it was not the low offeror, but the third low offeror, it revised its protest. It then contended that award should have been made to it because the equipment offered by the low offeror was rebuilt, not new. Further, it questioned whether both the low offeror and second low offeror are small business concerns qualified for award of this small business set-aside since their suppliers may not be small business concerns. Le Prix also complains that the contracting officer acted untimely in providing abstracts of the offers.

We dismiss the protest in part and deny it in part.

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Under 15 U.S.C. § 637(b)(6) (1976), the Small Business Administration conclusively determines matters of small business size status for procurement purposes. Therefore, we will not review the question of the small business size status of the low and second low offer. Putnam Mills Corporation, B-210063, January 21, 1983, 83-1 CPD 74.

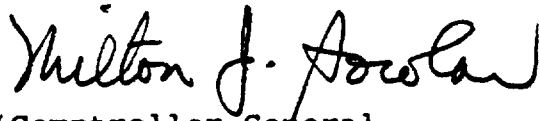
In the matter of the offering of rebuilt rather than new equipment, we have held that new equipment is not required where the specifications do not call for it. Wang Laboratories, Inc., B-190461, March 13, 1978, 78-1 CPD 197. Although the present RFQ's solicited offers on a brand name or equal basis listing specific salient characteristics, the purchase description did not call for new equipment. Therefore, the offer of rebuilt equipment was not precluded.

In the event rebuilt equipment was authorized under the RFQ's, Le Prix states that the solicitations should have been canceled and resolicited because it contends rebuilt equipment could have been furnished at a much lower cost than the low offer. However, Le Prix has not submitted any evidence to establish that the contracting officer knew that rebuilt equipment could be obtained at a price much below the low offer. In that regard, we have stated that a determination concerning price reasonableness is a matter of administrative discretion which our Office will not question unless the determination is unreasonable or there is a showing of bad faith or fraud. Introl Corp.; Forster Enterprises, B-209096; B-209096.2, June 9, 1983, 83-1 CPD 633.

The contracting agency stated in its report that the low offeror also quoted the best terms of all the offerors in that it offered the best delivery time and a 5-year warranty. Le Prix takes exception to that statement because it states that the brand name manufacturer specified in the RFQ's only provides a 1-year warranty and that, if it knew a 5-year warranty was required, it could have provided one. However, since Le Prix was not the low offeror, it was not prejudiced in that regard.

Finally, the contracting officer admits delays in furnishing information requested by Le Prix regarding the offers received and indicates that steps have been taken to preclude untimely action in the future. However, the contracting officer's failure to act promptly in furnishing

information is merely a procedural deficiency. A procedural deficiency does not affect the validity of a properly awarded contract. M. C. Hadom Construction Company, Inc., B-209241, April 22, 1983, 83-1 CPD 440.

*for*   
Comptroller General  
of the United States